10 CSR 10-6.300 Conformity of General Federal Actions to State Implementation Plans

(1) General.

(A) No department, agency or instrumentality of the federal government shall engage in support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(B) Under Clean Air Act (CAA) section 176(c) and 40 CFR part 51 subpart W, a federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action taken.

(C) Subsection (1)(B) of this rule does not include federal actions where either——

1. A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

2. All of the following conditions are met:

A. Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

B. Sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency’s affirmative obligation under section 176(c) of the CAA; and

C. A written determination of conformity under section 176(c) of the CAA has been made by the federal agency responsible for the federal action by March 15, 1994.

(D) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the CAA.

(2) Definitions.

(A) Terms used but not defined in this rule shall have the meaning given them by the CAA and Environmental Protection Agency's (EPA's) regulations, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

(B) Additional definitions specific to this rule are as follows:

1. Affected federal land manager——the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within one hundred kilometers (100 km) of the proposed federal action;

2. Applicable implementation plan——the (portion) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA (federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA;

3. Area wide air quality modeling analysis——an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality;

4. CAA——the Clean Air Act, as amended;

5. Cause or contribute to a new violation——a Federal action that——

A. Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

B. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation;

6. Caused by, as used in the terms “direct emissions” and “indirect emissions”——emissions that would not otherwise occur in the absence of the federal action;

7. Criteria pollutant or standard——any pollutant for which there is established a NAAQS at 40 CFR part 50;

8. Direct emissions——those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action;

9. Emergency——a situation where extremely quick action on the part of the federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations;

10. Emissions budgets——those portions of the total allowable emissions defined in an EPA approved revision to the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system must be specific enough to assure meeting the criteria of section 176(c)(1)(B) of the CAA. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan;

11. Emission offsets, for purposes of section (8) of this rule——emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA’s new source review requirements;

12. Emissions that a federal agency has a continuing program responsibility for——emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility;

13. EPA——the United States Environmental Protection Agency;

14. Federal action——any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the Federal permit, license, or approval;

15. Federal agency——for purposes of this rule, a federal department, agency, or instrumentality of the federal government;

16. Increase the frequency or severity of any existing violation of any standard in any area——to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented;

17. Indirect emissions——those emissions of a criteria pollutant or its precursors that——

A. Are caused by the federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

B. The federal agency can practicably control and will maintain control due to a continuing program responsibility of the federal agency, including, but not limited to——

(I) Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(II) Emissions related to the activities of employees of contractors or federal employees;

(III) Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; or

(IV) Emissions related to the use of federal facilities under lease or temporary permit.

18. Local air quality modeling analysis——an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality;

19. Maintenance area——any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA;

20. Maintenance plan——a revision to the applicable implementation plan, meeting the requirements of section 175A of the CAA;

21. Metropolitan planning organization (MPO)——that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607;

22. Milestone——has the meaning given in sections 182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be

achieved;

23. National ambient air quality standards (NAAQS)——those standards established pursuant to section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10}), and sulfur dioxide (SO_2);

24. NEPA——the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

25. Nonattainment area (NAA)——any geographic area of the United States which has been designated as nonattainment under section 107 of the CAA and described in 40 CFR part 81;

26. Precursors of a criteria pollutant——

A. For ozone, nitrogen oxides (NOx)(unless an area is exempted from NOx requirements under section 182(f) of the CAA), and volatile organic compounds (VOCs); and

B. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the PM_{10} levels;

27. Reasonably foreseeable emissions——projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency;

28. Regionally significant action——a federal action for which the direct and indirect emissions of any pollutant represent ten percent (10%) or more of a nonattainment or maintenance area’s emissions inventory for that pollutant;

29. Regional water or wastewater projects——include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area; and

30. Total of direct and indirect emissions——the sum of direct and indirect emissions increases and decreases caused by the federal action; that is, the net emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsections (3)(C), (D), (E), or (F) of this rule are not included in the "total of direct and indirect emissions", except as provided in subsection (3)(J). The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule.

(3) Applicability.

(A) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 10 CSR 10-2.390 and 10 CSR 10-5.480, in lieu of the procedures set forth in this rule.

(B) For federal actions not covered by subsection (3)(A) of this rule, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraphs (3)(B)1. or 2. of this rule.

1. For purposes of sub section (3)(B) of this rule, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC or NOx)	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region	
VOC	50
NOx	100

Carbon monoxide	
All NAAs	100
SO_2 or NO_2	
All NAAs	100
	Tons/Year
PM_{10}	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

2. For purposes of subsection (3)(B) of this rule, the following rates apply in maintenance areas:

	Tons/Year
Ozone (NOx), SO_2 or NO_2	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide	
All maintenance areas	100
PM_{10}	
All maintenance areas	100
Pb	
All maintenance areas	25

(C) The requirements of this rule shall not apply to——

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (3)(B) of this rule;

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis:*

A. Judicial and legislative proceedings;

B. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

C. Rulemaking and policy development and issuance;

D. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

E. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

F. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees;

G. The routine, recurring transportation of material and personnel;

H. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul;

I. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

J. With respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

K. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

L. Planning, studies, and provision of technical assistance;

M. Routine operation of facilities, mobile assets and equipment;

N. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

O. The designation of empowerment zones, enterprise communities, or viticultural areas;

P. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States;

Q. Actions by the Board of Governors of the Federal Reserve System or any federal reserve bank to effect monetary or exchange rate policy;

R. Actions that implement a foreign affairs function of the United States;

S. Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties;

T. Transfers of real property, including, land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants; and

U. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

3. Actions where the emissions are not reasonably foreseeable, such as the following:

A. Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level; and

B. Electric power marketing activities that involve the acquisition, sale and transmission of electric energy; and

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(D) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

1. The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

2. Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (3)(E) of this rule;

3. Research, investigations, studies, demonstrations, or training, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the department;

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions); and

5. Direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (3)(D)2. of this rule and which are to be taken more than six (6) months after the commencement of the response to the emergency or disaster under paragraph (3)(D)2. of this rule are exempt from the requirements of this rule only if——

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six (6) months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

2. For actions which are to be taken after those actions covered by paragraph (3)(E)1. of this rule, the federal agency makes a new determination as provided in paragraph (3)(E)1. of this rule.

(F) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (3)(G)1. or 2. and the procedures set forth in subsection (3)(H) of this rule are presumed to conform, except as provided in subsection (3)(J) of this rule.

(G) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (3)(G)1. or 2. of this rule.

1. The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not——

A. Cause or contribute to any new violation of any standard in any area;

B. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

C. Increase the frequency or severity of any existing violation of any standard in any area; or

D. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of——

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan; or

2. The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in subsection (3)(B) of this rule, based, for example, on similar actions taken over recent years.

(H) In addition to meeting the criteria for establishing exemptions set forth in subsections (3)(G)1. or 2. of this rule, the following procedures must also be complied with to presume that activities will conform:

1. The federal agency must identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

2. The federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the MPO and provide at least thirty (30) days for the public to comment on the list of proposed activities presumed to conform;

3. The federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency must publish the final list of such activities in the *Federal Register.*

(I) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in subsection (3)(B) of this rule, but represents ten percent (10%) or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of sections (1) and (5)——(10) of this rule shall apply for the federal action.

(J) Where an action presumed to be *de minimis* under paragraphs (3)(C)1. or 2. of this rule or otherwise presumed to conform under subsection (3)(F) of this rule is a regionally significant action or where an action otherwise presumed to conform under subsection (3)(F) of this rule does not in fact meet one (1) of the criteria in paragraph (3)(G)1. of this rule, that action shall not be considered *de minimis* or presumed to conform and the requirements of sections (1) and (5)——(10) of this rule shall apply for the federal action.

(K) The provisions of this rule shall apply in all nonattainment and maintenance areas.

(L) Any measures used to affect or determine applicability of this rule, as determined under this section, must result in projects that are in fact *de minimis* must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or

agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this rule is approved by EPA as a revision to the applicable implementation plan, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity and applicability determination.

(4) Conformity Analysis. Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR part 51 subpart W and this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(5) Reporting Requirements.

(A) A federal agency making a conformity determination under section (8) must provide to the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO a thirty (30)-day notice which describes the proposed action and the federal agency’s draft conformity determination on the action.

(B) A federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO within thirty (30) days after making a final conformity determination under section (8).

(6) Public Participation and Consultation.

(A) Upon request by any person regarding a specific federal action, a federal agency must make available for review its draft conformity determination under section (8) with supporting materials which describe the analytical methods, assumptions, and

conclusions relied upon in making the applicability analysis and draft conformity determination.

(B) A federal agency must make public its draft conformity determination under section (8) by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing thirty (30) days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(C) A federal agency must document its response to all the comments received on its draft conformity determination under section (8) and make the comments and responses available, upon request by any person regarding a specific federal action, within thirty (30) days of the final conformity determination.

(D) A federal agency must make public its final conformity determination under section (8) for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within thirty (30) days of the final conformity determination.

(7) Frequency of Conformity Determinations.

(A) The conformity status of a federal action automatically lapses five (5) years from the date a final conformity determination is reported under section (5), unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(B) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under section (5).

(C) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (3)(B), a new conformity determination is required.

(8) Criteria for Determining Conformity of General Federal Actions.

(A) An action required under section (3) to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in subsection (3)(B), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection (8)(C) of this rule, and meets any of the following requirements:

1. For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;

2. For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no net increase in emissions of that pollutant;

3. For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements——

A. Specified in subsection (8)(B) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or

B. Specified in paragraph (8)(A)5. of this rule and, for local air quality modeling analysis, the requirement of subsection (8)(B) of this rule;

4. For CO or PM_{10}——

A. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection (8)(B) of this rule, based on local air quality modeling analysis; or

B. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection (8)(B) of this rule, based on areawide modeling, or meet the requirements of paragraph (8)(A)5. of this rule; or

5. For ozone or nitrogen dioxide, and for purposes of subparagraphs (8)(A)3.B. and (8)(A)4.B. of this rule, each portion of the action or the action as a whole meets any of the following requirements:

A. Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in part (I) or where the state makes a commitment as provided in part (II). Any such determination or commitment shall be made in compliance with sections (5) and (6).

(I) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable implementation plan.

(II) The total of direct and indirect emissions from the action (or portion thereof) is determined by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable implementation plan and the department makes a written commitment to EPA which includes the following:

(a) A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(b) Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all

other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

(c) A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(d) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(e) Written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under part (8)(A)5.A.(II) of this rule, such a state commitment is automatically deemed a call for an implementation plan revision by EPA under section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within eighteen (18) months or any shorter time within which the state commits to revise the applicable implementation plan;

B. The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 10 CSR 10-2.390 or 10 CSR 10-5.480;

C. The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable implementation plan or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

D. Where EPA has not approved a revision to the relevant implementation plan attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in subsection (9)(D) of this rule) do not increase emissions with respect to the baseline emissions, and——

(I) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during——

(a) Calendar year 1990;

(b) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81; or

(c) The year of the baseline inventory in the PM_{10} applicable implementation plan;

(II) The baseline emissions are the total of direct and indirect emissions calculated for the future years using the historic activity levels and appropriate emission factors for the future years; or

E. Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (9)(A).

(B) The areawide and local air quality modeling analyses must——

1. Meet the requirements in section (9); and

2. Show that the action does not——

A. Cause or contribute to any new violation of any standard in any area; or

B. Increase the frequency or severity of any existing violation of any standard in any area.

(C) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules,

assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

(D) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified in compliance with section (10), before the determination of conformity is made.

(9) Procedures for Conformity Determinations of General Federal Actions.

(A) The analyses required under this rule must be based on the latest planning assumptions.

1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations and other federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area.

(B) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA regional administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for

use in the preparation or revision of implementation plans in the state or area must be used for the conformity analysis as specified below:

A. The EPA must publish in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

B. A grace period of three (3) months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three (3) years before the *Federal Register* notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

2. For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(C) The air quality modeling analyses required under this rule must be based on the applicable air quality models, databases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless——

1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

2. Written approval of the EPA regional administrator is obtained for any modification or substitution.

(D) The analyses required under this rule must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

1. The CAA mandated attainment year or, if

applicable, the farthest year for which emissions are projected in the maintenance plan;

2. The year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

3. Any year for which the applicable implementation plan specifies an emissions budget.

(10) Mitigation of Air Quality Impacts.

(A) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(B) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with subsection (10)(A) of this rule.

(C) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(D) In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination as provided in subsection (10)(A) of this rule.

(E) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with sections (8) and (9) and this section. Any proposed change in the mitigation measures is subject to the

reporting requirements of section (5) and the public participation of section (6).

(F) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(G) After this rule is approved by EPA as an implementation plan revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(11) Savings Provision. The federal conformity rules under 40 CFR part 51 subpart W, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this rule is approved by EPA as an implementation plan revision. Following EPA approval of this rule as a revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) state criteria and procedures will govern conformity determinations and the federal conformity regulations contained in 40 CFR part 93 will apply only for the portion, if any, of the state’s conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

EPA Rulemakings

CFR: 40 C.F.R. 52.1320(c)(97)(i)(A)

FRM: 62 FR 26395 (5/14/97)

PRM: 62 FR 26460 (5/14/97)

State Submission: 11/20/96

State Proposal: 21 MR 1799 (8/1/96)

State Final: 10 C.S.R. 10-6 (8/31/96)

APDB File: MO-117

Description: The EPA granted final full approval to the SIP for the purpose of meeting the requirements of the EPA’s general conformity rule. This rulemaking fulfills the conditions of the conditional approval granted on March 11, 1996.

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CFR: 40 C.F.R. 52.1320(c)(93)(i)(A)

FRM: 61 FR 9642 (3/11/96)

PRM: 61 FR 9661 (3/11/96)

State Submission: 2/14/95

State Proposal: 19 MR 2579 (11/1/94)

State Final: 10 C.S.R. 10-6 (4/28/95)

APDB File: MO-117

Description: The EPA approved a new regulation which gives conditional approval to the SIP submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA’s General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 C.F.R. 51.852 and 93.151. The state of Missouri commits to change the wording in paragraphs (3)(C)4. and (9)(B) of Missouri rule 10 C.S.R. 10-6.300, and to submit the change to the EPA by December 7, 1996. The change will give the rule the same stringency as the Federal general conformity rule.

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Difference Between the State and EPA-Approved Regulation

None.